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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

November 5,2001

VIA COURIER

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Global NAPs Inc.'s Reply Comments In the Matter of Developing a Unified Intercarrier Compensation Regime
CC Docket No. 01-92

Dear Ms. Salas:

Enclosed for filing are an original and four (4) copies of Global NAPs, Inc.'s Reply Comments In the Matter of Developing a Unified Intercarrier Compensation Regime.

Please direct any questions concerning this filing to the undersigned counsel.

Sincerely,

Rachael Galoob

Counsel for Global NAPs, Inc.

Enclosures

cc: Attached Service List

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	
Developing a Unified Intercarrier Compensation Regime	CC Docket No. 01-92

REPLY COMMENTS OF GLOBAL NAPS, INC.

It was probably inevitable that many commenters in this matter would focus on their short-run, immediate regulatory problems under the current patchwork quilt of intercarrier compensation arrangements. On the one hand, the existing system is so riddled with inconsistencies and arbitrage opportunities that any carrier can find something not to like. On the other hand, most carriers can find some inconsistencies and arbitrage opportunities that work to their advantage. These, of course, must either be defended on some seemingly high-minded ground, or, more often, passed over silently.[1]

Global NAPs trusts that the Commission will not be distracted by these matters, but will, instead, be faithful to its original objective, which was to develop an understanding of what an economically efficient, competitively neutral regime for intercarrier compensation might be, and to consider how to implement it. Global NAPs, therefore, urges the Commission, to reflect on two key facts.

First, the cost a network incurs in handling traffic is not affected by the classification of the traffic as local versus toll, interLATA versus intraLATA, or interstate versus intrastate. ***Any regulatory regime that imposes different economic consequences based on any of thesefactors will create inconsistencies and arbitrage opportunities.***

[1] *Cf.* L. Wittgenstein, TRACTATUS LOGICO-PHILOSOPHICUS ("What we cannot **speak** about we must **pass** over in silence.")

Second, the cost a network incurs in handling traffic is not affected by the classification of the entity delivering it as an end user, a LEC, an "information services" provider, an interexchange carrier ("IXC"), or some as-yet uninvented regulatory category. ***Any regulatory regime that imposes different economic consequences based on these factors will create inconsistencies and arbitrage opportunities.***

At bottom, the arbitrage opportunities that concern the Commission arise from the myriad ways in which the existing system of compensating carriers departs from these two simple principles. If different "types" of traffic and different "types" of entities are subject to different payment regimes, then all affected players — ILECs, CLECs, end users, IXCs, and others — will be motivated to arrange their affairs to obtain the economic benefits available from being classified one way or another by the regulatory system. On the other hand, if the price a carrier charges for handling a minute of traffic is the same, irrespective of whether the traffic comes from an IXC, a CLEC, an ILEC, an end user, or anyone else, then everyone's choices will be based on sensible economic price signals, as compared to regulatory metaphysics.

To their credit, some ILECs seem to understand that — or at least to give lip service to the idea that — treating technically equivalent traffic differently causes problems.[2] For example, BellSouth has noted that for its proposed regime "to operate as

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[2] *See* Comments of SBC Communications Inc. ("SBC Comments") at 16-18; Verizon Comments at 3-5; Comments of BellSouth Corporation ("BellSouth Comments") at 15; Qwest Communications International, Inc. Comments ("Qwest Comments") at 9-11. Qwest correctly notes that any new regime must be consistent, and "should apply to any hand-off of traffic over the public switched network for any traffic that touches that network. The rules should not vary with the traditional treatment of any given carrier under legacy regulation. Neither should those rules vary with the type of technology or architecture employed by a particular carrier within its network." Qwest Comments at 4.

intended, it must be implemented uniformly across state and interstate jurisdictions;" the alternative "would simply invite regulatory arbitrage."[3]

More common among the ILECs, however, is the claim that no matter what the Commission does, it should guarantee the ILECs' ability to continue to mainline access charge revenues while cutting off ILEC obligations to pay other carriers for the work of delivering ILEC-originated traffic. For example, SBC proposes that the Commission should adopt bill-and-keep, but only with regard to "local, wireless and Internet telecommunications traffic that currently is subject to the Commission reciprocal compensation rules."[4] Essentially, SBC wants to stop paying CLECs for terminating traffic its end users make to CLEC customers — including ISPs — but wants to continue receiving access revenues for toll traffic. This arrangement, of course, invites arbitrage; it does not remove it.

Verizon is even less logical or consistent. Verizon offers no serious discussion of how the Commission should structure a compensation regime to meet the overall needs of the industry. Indeed, other than asking the Commission to move Internet bound traffic

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[3] BellSouth Comments at 4 & n.6. *See also* ***id.*** at 17 ("There are arbitrage opportunities created by the different pricing rules that apply depending on the type of traffic (*e.g.*, wireless versus wireline) and the jurisdiction of the traffic (e.g., interstate switched access versus intrastate switched access.)). The ILECs predictably complain about competitive carriers adopting business plans designed primarily to take advantage of a regulatory arbitrage opportunity, such as CLECs seeking ISP customers. ***See,*** *e.g.,* Qwest Comments at 16. SBC Comments at 15. But it would be naïve in the extreme for the Commission to assume that profit-motivated firms — including the ILECs — will for some reason fail to arrange their affairs to take advantage of the financial opportunities presented by whatever regulatory rules happen to be in effect at any given time. One can demonize regulated firms by referring to "gaming" the system or "arbitrage," but at bottom this situation reflects the unremarkable fact that in a regulated industry, the terms of the regulations matter.

[4] SBC Comments at 24.

to bill-and-keep,[5] and inaccurately characterizing how LEC utilize NXX numbers,[6] the only issue that Verizon presented that warrants serious comment is the treatment of local and toll traffic.[7] Verizon requests that the Commission implement even more rigid rules to distinguish local and toll calls.[8] This, however, would intensify the incentives for arbitrage, not remove them.'

When otherwise sophisticated entities like Verizon and SBC make such plainly illogical arguments, one cannot help but wonder what they fear from the application of logic and common sense. **As** far as Global NAPs can tell, the problem is that if ILECs are entitled to get paid when they handle traffic coming in to their networks (whether from an IXC or an end user, for example), there is no sensible reason that CLECs and others should not get paid when they perform the same function. ILECs, of course, get paid a ***lot*** (from their end users and from IXCs), but they don't want to have to pay CLECs when they send the CLECs traffic to send on to ISPs or others. So they cannot argue for a consistently-applied compensation system while also (a) striving to continue

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5 Verizon Comments 3-4.

6 *Id*. at **4-9.**

7 Verizon Comments at 4, 17-21.

8 *Id*.

9 One is reminded of the beleaguered (if apocryphal) workers who receive a notice that "Management has determined that, in light of the serious employee morale problem, it will continue to fire employees until morale improves." The existence of artificial distinctions among "types" of technically identical traffic is the ***cause*** of the arbitrage problem. Shoring up those distinctions — Verizon's approach — can only make the problem worse. Qwest, at least, seems to understand this. *See* Qwest Comments at 9-11. To address one of Verizon's specific points, the fact that some CLECs assign telephone numbers in ways that make it difficult for Verizon to continue to use traditional local/toll distinctions (whether to extract monopolistic access charges from carriers or monopolistic toll charges from end users) does not in any way imply that the CLECs are doing anything wrong. To the contrary, it illustrates that the distinctions Verizon clings to are anachronistic in an environment where many carriers use differing network architectures to serve the same group of customers.

collecting access charges, and (b) seeking to escape from paying for ISP-bound traffic. With a consistent approach, either they lose their access charge revenues (bill-and-keep for everything, including access) or they have to pay for ISP-bound traffic (calling network pays for everything, including ISP-bound calls). Since neither is acceptable, the ILECs confront a choice between advocating a consistent, sensible policy or protecting their pocketbooks. Their choice is unsurprising, if still disappointing as a policy matter.''

Global NAPs submits that the inconsistency of the ILECs' logic demonstrates that — contrary to their importunings — the most workable policy here is a uniform system of "calling entity pays," stripped of arbitrage opportunities, as opposed to trying to move to bill-and-keep. There are two main reasons for this conclusion.

First, as a purely practical matter, what with end user charges, reciprocal compensation, and access charges, the "calling entity pays" model is clearly the dominant means by which network providers get paid today. It will be a lot easier to harmonize the payment rates for different types of traffic, while leaving some payment in place, than it would be to try to eliminate compensation for all types of traffic. Global NAPs submits that this consideration underlies the Commission's view that access charge reform

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[10] Various ILECs advance various individual grounds in support of partial bill-and-keep regimes. *See, e.g.,* Qwest Comments at 7-20; SBC Comments at 24-32; BellSouth Comments at 3-4, 12. For example Qwest believes that bill-and-keep will remove the terminating carriers incentive to charge unreasonably high rates for call completion, increase role of market forces, and create more regulatory stability by decreasing opportunities for regulation driven arbitrage. Qwest Comments at 9-19. Similarly, BellSouth argues that bill-and-keep will minimize a carrier's ability for manipulation for private gain with the lease amount of regulatory intervention. BellSouth Comments at 12. With due respect, these claims are baseless. If regulatory simplicity is the objective, consider that a single regulatory obligation on all ILECs to handle all incoming traffic at a single, unified rate — and a single regulatory obligation on all entities interconnecting with them to accept traffic from them at the same rate, in order to take advantage of the unified rate from the ILEC — would create strong incentives on all affected carriers to promptly establish a cost-based single rate for that activity.

pursuant to the CALLS order would not be affected by this proceeding." Even if a uniformly applied calling-network-pays system is ultimately equivalent, economically, to a uniformly applied bill-and-keep system (as to which, *see* below), the fact remains that eliminating intercarrier compensation is a much bigger step than "merely" harmonizing the rates applicable to different "types" (under today's taxonomy) of technically equivalent traffic.

A more theoretical consideration — although, ultimately, this one is "practical" as well — also argues in favor of "calling entity pays" rather than bill and keep. Global NAPs explained in its comments that it ultimately doesn't matter whether bill-and-keep or calling-network-pays is chosen, as long as the chosen option is applied across the board and as long as individual parties can contract around the default result.'* Again, counter-intuitive though it may be, this is the result of the Coase Theorem, which shows that in situations such as linked networks, where parties can cause each other to incur costs as a result of the linkage, the same economic result arises no matter which entity is held "responsible" for the costs in question.

In practical terms, though, not only are "networks" linked to each other; they are also linked to other entities that send and receive traffic — end users. The laws of economics apply to end users just as surely as they apply to firms now classified as networks. As a result, just as networks will arrange their affairs to obtain the most favorable regulatory treatment for their activities — so-called "arbitrage" — so too will end users. A system in which "networks" pay nothing to originate traffic to each other,

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11 NPRM at ¶ 97.

12 ***See*** Global NAPs Comments at 2-7.

but in which "end users" pay non-trivial usage charges to originate technically identical traffic to "networks," would create enormous incentives for entities who might otherwise be viewed as "end users" to arrange their affairs so as to qualify for the economically privileged status of "network."

The only way to avoid this situation in a "bill and keep" world would be to apply the same "bill and keep" regime to end users that would (by hypothesis) apply to networks. While there is probably some way to apply a zero-compensation policy for originating traffic (that is, bill and keep) to networks and end users alike, doing so would entail a complete rearrangement of present retail pricing arrangements in essentially all telecommunications markets.[13] So even though as a matter of pure economic theory it does not matter whether the originating entity or the receiving entity is deemed "responsible" for the costs of handling traffic — so that either "calling entity pays" or "bill and keep" could, theoretically, be made to work — as a practical matter, setting up a non-arbitrage-able bill and keep system is so daunting as to be effectively impossible.

For these reasons, Global NAPs concurs with those urging the Commission to adopt a uniform "calling network pays" system for all intercarrier compensation.[14] Regulatory policy, like politics, is in large measure the art of the possible. It may not be possible in the world of telecom regulatory politics to get to a uniform, non-arbitrage-able

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[13] For example, one could imagine a world in which an end user seeking to be connected to the PSTN would pay a flat monthly "capacity" charge sufficient to cover the full cost of facilities dedicated to that end user, including an allowance for essentially unlimited incoming and outgoing usage. Outbound traffic from such an end user — that is, traffic "inbound" to the network from the end user — would be on a "bill and keep" basis, just like traffic from another network. The fact that such economic arrangements are both conceivable in the abstract and theoretically consistent, however, does not mean that there is any practical way to actually implement them.

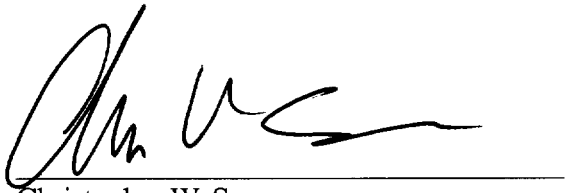
[14] *See, e.g.*, Comments of Focal Communications Corporation, PAC-West Telecom, Inc., RCN Telecom Services, Inc. and US LEC at 46-54; AT&T Comments at 21-25.

"calling entity pays" system. But it is ***certainly*** not possible in any meaningful time frame to begin even to approach a non-arbitrage-able "bill and keep" system.

Consequently, Global NAPs respectfully urges the Commission to adopt rules which will require ILECs, CLECs, IXCs and others to exchange traffic at a single, uniform rate irrespective of the classification of the traffic as "local," "toll," "interstate," "intrastate," or any other category that does not relate to the technical and economic aspects of handling the traffic.

Respectfully submitted,

GLOBAL NAPS, INC.

By: 

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November 5, 2001

CERTIFICATE OF SERVICE

I, Lena Mosley, hereby certify that on this 5th day of November 2001, caused a copy of the foregoing ***Global NAPs, Inc.'s Reply Comments In the Matter of Developing a Unified Intercarrier Compensation Regime*** to be sent via courier to the following:

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